

CHAPTER 17 DOWNTOWN DEVELOPMENT DISTRICT

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1700 GENERAL PROVISIONS

- 1700.1** The Downtown Development (DD) District is applied to the core of the Downtown area, including subareas identified in the Comprehensive Plan as the Retail Core (Shopping District), the Arts District, Gallery Place, Chinatown, Pennsylvania Quarter, Convention Center, and Mount Vernon Square, and areas designated for historic preservation and housing mixed use, which areas overlap geographically with the subareas. The boundaries of the DD District are indicated in Map A. All street locations in this overlay zone are in N.W. Washington,
- 1700.2** The purpose of the Downtown Development District is to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected sectors of Downtown. The adopted planning policies for this area are primarily contained in 10 DCMR, Chapter 9, entitled Downtown Plan and 10 DCMR, Chapter 10, entitled "Land Use," as amended.
- 1700.3** The most important general purposes shall include:
- (a) To create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Plan, including retail, hotel, residential, entertainment, arts and cultural uses;
 - (b) To guide and regulate office development, which is generally favored by market forces over the other desired uses, so as to further the land use objectives for retail, hotel, residential, entertainment, arts and cultural uses;
 - (c) To protect historic buildings and places while permitting sensitive and compatible new development subject to the historic preservation review process of D.C. Law 2-144;

- (b) To **substantially** achieve the specific land use and development policies for the following Downtown subareas: Retail Core, Gallery Place, Convention Center, Chinatown, Pennsylvania Avenue West, Market, Square, Mount Vernon Square, and Judiciary Square;
 - (e) To guide the design of buildings to be generally consistent with the urban design, street orientation and design, and historic preservation policies of the Downtown Element of the Comprehensive Plan;
 - (f) To foster growth opportunities for and retention of small and minority businesses; and
 - (g) To provide adequate and visually acceptable short-term parking and consolidated loading facilities having access primarily from streets other than F, G, and 7th Streets.
- 1700.4 The Downtown Development District and the underlying zoning shall together constitute the zoning regulations for the geographic area referred to in §1700.1. Where there are conflicts between this chapter and the underlying zoning, the provisions of the DD overlay shall govern.
- 1700.5 The requirements and incentives of this chapter shall apply to all new buildings and to all other buildings where any additions, alterations or repairs within any twelve (12) month period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Property Assessment as of the date of the building permit application; Provided that the following requirements are met:
- (a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit;
 - (b) The assessed value of the building shall be the value as set forth in records of the Office of Property Assessment as of the date of the building permit application; and
 - (c) In the case of an addition, the requirements and incentives of this chapter shall apply only to the addition.
- 1700.6 An applicant for a building permit or a certificate of occupancy involving 10,000 square feet (10,000 ft²) or more of gross floor area within the DD District shall provide a copy of the application, or of those portions of the application affected by the DD overlay zone provisions, to the Director, Office of Planning, at the time of filing with the Zoning Administrator; the Director, Office of Planning shall, within ten (10) days of the filing, provide the Zoning Administrator with a memorandum setting forth the Director's interpretation of DD requirements, incentives and other effects.
- 1700.7 A Planned Unit Development (PUD) in the DD District shall be subject to the following provisions in addition to those of Chapter 24 of this title:

- (a) The PUD shall only be granted for projects that are superior in achieving the purposes of this chapter and the adopted objectives and policies of the Downtown Element of the Comprehensive Plan;
- (b) The PUD process shall not be used to reduce requirements in this chapter for housing or preferred uses, specifically retail, service, entertainment, arts and residential uses;
- (c) Except as provided in §1706.8 the guideline FAR for a PUD may be granted only after the applicant has demonstrated to the Zoning Commission that transferable development rights have been purchased to the maximum feasible extent prior to the request for additional density in excess of that amount; and
- (d) Notwithstanding paragraphs (b) and (c) of this sub-section, if a planned unit development is proposed to govern development of the University of the District of Columbia campus and other uses in Squares 401, 402, 425 and 426, the PUD shall be guided by the applicable policies of the Comprehensive Plan.

1701 AREA-WIDE DESIGN STANDARDS

- 1701.1 The floor area ratio credit for open arcades as provided in §2515 of this title is not applicable in the DD District.
- 1701.2 Any open arcade in the DD District shall extend the length of an entire block frontage, or shall connect with an open arcade in an abutting building in such fashion as to provide a continuous walkway.
- 1701.3 Not less than seventy-five percent (75%) of each streetwall of new construction to a height of not less than fifteen feet (15 ft.) shall be constructed to, or within four feet (4 ft.) of, the property line between the subject lot and each abutting street right-of-way.
- 1701.4 Along the following street frontages the provisions of §2117.8(c)(1) of this title are modified so as to prohibit the construction or use of a driveway providing access from the adjacent public street to required parking spaces or loading berths on the subject lot:
 - (a) F Street, N.W., from 7th to 15th Streets;
 - (b) G Street, N.W., from 7th to 15th Streets;
 - (c) 10th Street, N.W., from E to F Streets;
 - (d) 7th Street, N.W., from Pennsylvania Avenue to Mount Vernon Square;
 - (e) H Street, N.W., from 5th to 8th Streets;

- (f) Pennsylvania Avenue, N.W., from 6th to 15th Streets: and
- (g) Indiana Avenue, N.W., from 6th to 7th Streets.

1701.5 Along the street frontages listed in §1701.4, and those listed in paragraph (c) of this subsection, not less than fifty percent (50%) of the surface area of any streetwall at the ground floor level of each building shall be devoted to display windows and to entrances to commercial uses or to the building; provided, that:

- (a) Such windows shall use clear, or low emissivity glass, except for decorative or architectural accent;
- (b) Entrances to the building, excluding vehicular entrances, shall be separated by not more than fifty feet (50 ft.) on average for the linear frontage of the building; and
- (c) The additional applicable street frontages shall be E Street, N.W., from Gth to 14th Streets; 10th through 13th Streets, N.W., from E to H Streets; 9th Street, N.W., from E to I Streets; 14th and 15th Streets, N.W., from Pennsylvania Avenue to New York Avenue; I Street, N.W., from 5th to 7th Streets; and 8th Street, from Pennsylvania Avenue to Mt. Vernon Square.

1701.6 The requirements of §§1701.1 through 1701.5 shall not apply to a department store, theater, hotel, apartment house, or church or other place of worship.

1701.7 Except in the underlying R-5-B, R-5-E, C-2-A, and C-3-A Districts, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; provided, that a building that fronts on Massachusetts Avenue or on Mount Vernon Square shall be designed and built so that no part of the building shall project above a plane drawn at a forty-five (45) degree angle from a line located one hundred ten feet (110 ft.) above the property line abutting Massachusetts Avenue or Mount Vernon Square.

1702 AREA-WIDE USE PROVISIONS

1702.1 Each building that faces or abuts a street segment identified in §1701.4 or §1701.5 shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to permitted retail, service, arts and entertainment uses listed in §§1710.1 and 1711.1; Provided that the following requirements are met:

- (a) Not more than twenty percent (20%) of the required ground level space shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices;

- (b) The uses specified in paragraph (a) shall account for no more than thirty percent (30%) of the total space requirement for commercial preferred uses in a building, as provided in §§1703 through 1705 of this chapter; and
 - (c) This ground level use requirement shall not apply to a building that is entirely devoted to hotel or apartment house use, or to a church or other place of worship.
- 1702.2 Each building shall provide on-site or account for off-site, gross floor area equivalent devoted to preferred uses; provided that:
 - (a) Preferred uses shall be provided and located according to the guidelines by Downtown Subarea as set forth in §§1703 through 1706 of this chapter;
 - (b) For the purposes of this chapter, cellar space devoted to preferred uses other than residential uses shall count towards the minimum requirement without affecting the permitted maximum bulk of the building;
 - (c) The net leasable area occupied by the required preferred uses shall be no less than eighty percent (80%) of the gross floor area allocated to these uses; and
 - (d) The uses listed in §1712.1 are deemed office uses in the DD District for purposes of FAR computations.
- 1702.3 A child development center or a child development home shall count at one-and-one-half (1 1/2) times its actual gross floor area towards the nonresidential preferred use requirement of any subarea; provided, that the child development center will be open and operating during normal business hours at least five (5) days each week and fifty (50) weeks each calendar year, excluding public holidays.
- 1702.4 An existing theater, hotel or apartment house shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless such conversion or replacement has been reviewed and approved by the Board of Zoning Adjustment pursuant to §3107.2 of this title.
- 1702.5 A department store in existence as of March 13, 1989, shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless approved by the Board of Zoning Adjustment pursuant to §3107.2 of the title: Provided that:
 - (a) The entirety of the gross floor area may be converted as a matter of right to any combination of preferred retail, service and arts-related uses as listed in §§1710 and 1711 of this chapter, provided that any conversion on Square 346 may also include residential use, as defined in this chapter.

- (b) The gross floor area of the department store space after conversion may include a reduction or rearrangement in floor area to accommodate a new atrium or light well, or different configuration of the new use or uses;
 - (c) A department store that existed as of the adoption of the SHOP District on March 13, 1989, but which was no longer in existence and operating as of the adoption of the Downtown Development District on January 18, 1991, may be converted to any uses permitted in the underlying zone district provided that retail and arts-related uses as specified in §§1710 and 1711 shall occupy no less than 2.0 FAR equivalent in the converted or restructured building.
- 1702.6 If a church or other place of worship that is in use on the January 18, 1991, is later included in a redevelopment, the portion that continues as a church or place of worship shall be exempt from the requirements of this section.
- 1702.7 A parking lot, parking garage, or parking spaces at or above grade in a building, shall be permitted as follows:
 - (a) The parking facility shall be permitted as a matter-of-right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization:
 - (b) The parking facility shall be permitted as a matter-of-right if it provides parking only for residents; and
 - (c) The parking facility shall require Board of Zoning Adjustment approval pursuant to §3107.2 of this title if it provides all-day, commuter parking.
- 1702.8 A building in Square 404 excluding Lot 813 or in Square 405 north of a line extending the midpoint of G Place eastward from 9th to 8th Street, which properties are outside the subarea boundaries provided in §§1703 through 1706, shall provide preferred uses according to one of the following provisions, at the election of the property owner:
 - (a) Preferred uses may be provided according to the requirements and incentives of any one of the following sections: 1703, 1704, 1705 or 1706;
 - (b) As an alternative to paragraph (a) , the property owner may develop not less than 1.5 FAR of bonus office density received from another site or sites within the DD District, pursuant to the provisions of §1709; and
 - (c) If bonus density is developed pursuant to paragraph (a) or transferable development rights pursuant to paragraph (b), the maximum permitted FAR shall be 9.5 in Square 405 and 8.5 in Square 404.

1703 DOWNTOWN SHOPPING DISTRICT

1703.1 The principal policies and objectives for the Downtown Shopping District (SHOP), or Retail Core, derived from the Comprehensive Plan, are as follows:

- (a) To create the most concentrated area of retail, service, arts, and entertainment uses in Downtown, in excess of one floor of these uses, with the greatest retail concentration oriented to F and G Streets, N.W.;
- (b) To strengthen the character and identity of the District by means of physical design standards which ensure the following:
 - (1) New buildings constructed to the property line and primarily oriented to the street rather than to internal spaces;
 - (2) Continuous retail, service, and entertainment uses on the ground level of buildings, with ample display windows and frequent store entrances to the outdoor pedestrian circulation system; and
 - (3) A pedestrian environment with ample sidewalks interrupted by a minimum of vehicular driveways, especially along F and G Streets.

1703.2 The provisions of this section apply to the general area identified in the Comprehensive Plan as the Retail Core, or Downtown Shopping District, comprising squares 223, 224, 225, 252, 253, 254, 288, 289, 290, 319, 320, 321, 345, 346, 347, 375, 376, and 377. This area is bounded by H Street and New York Avenue, N.W. on the north, E Street and Pennsylvania Avenue on the south, 9th Street on the east, and 15th Street on the west.

1703.3 Each new or altered building that faces or abuts a public street shall devote all of the ground floor leasable space to retail and personal service uses listed in §1710 or the arts uses listed in §1711; Provided that the following applies:

- (a) The gross floor area devoted to the retail and arts uses listed in §§1710 and 1711 shall be no less than 0.5 FAR on the ground floor;
- (b) Not more than twenty percent (20%) of the required ground floor area shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices, delicatessens, fast food restaurants, printing or fast copy services, newsstands, dry cleaners, or any combination thereof;
- (c) This ground floor use requirement shall not apply to a building that is entirely devoted to hotel or apartment house use, or to a church or other place of worship; and
- (d) In the applicable sector of the Downtown Arts District, that is, Squares 254, 290, 321, 347, 377, 376 and 375 (south of G Place), uses which are set forth in §1711 shall comprise not less than fifty percent (50%) of the floor area required to be devoted to preferred uses.

- 1703.4** A building that provides gross floor area for preferred uses as required by §1703.3 and which includes any of the bonus uses indicated below, may count the floor area devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	<u>Space Devoted to the bonus use</u>		<u>Proportionate number of s.f. of additional g.f.a. earned for on-site or off-site development</u>
(a) Department store	1	to	3
(b) Anchor store having 60,000 s.f. or more of gross leasable area. A complex of two (2) or more anchor stores in a single building that accommodates a total of at least 90,000 s.f. of gross leasable area devoted to anchor stores, legitimate theater	1	to	2
(c) Anchor store having 25,000 s.f. to 59,000 s.f. of gross leasable area; and	1	to	1.5
(d) Movie theater; performing arts space, small, minority or displaced business; and other uses from §§1710 and 1711 in excess of the 0.5 FAR equivalent required by §1704.3, not to be counted in addition to other bonus floor area earned from this subsection, and applicable to department store sites regulated by §1702.5	1	to	1

- 1703.5 In the ARTS District sector of SHOP, as identified geographically in paragraph 1703.3(d), a building shall be eligible for the bonuses specified in paragraphs 1704.6(a), (b) and (c).

- 1703.6 If a building in the SHOP District uses bonus density, the maximum permitted FAR shall be 10.5 for a building permitted a height of 130 feet and 9.5 for a building permitted a lesser height.

1704 DOWNTOWN ARTS DISTRICT

- 1704.1 The policies and objectives for the Downtown Arts District, as defined in the Comprehensive Plan, including the Gallery Place subarea of Downtown and portions of the Retail Core, Pennsylvania Quarter, Convention Center and Chinatown subareas, shall be as follows:

- (a) Retain, expand and support a concentration of spaces and activities for the arts and artists, including the performing and visual arts, cultural facilities, entertainment and arts-related retail uses;
- (b) Create two (2) strong arts-entertainment corridors within the following areas:
 - (1) A spine of theaters, movie theaters, restaurants, nightclubs and arts-related retail uses along E Street from 6th to 14th Street, N.W.; and

- (2) A pedestrian-oriented concentration of museums, art galleries, other performing or visual arts uses, and festive retail -entertainment uses along 7th Street from Pennsylvania Avenue to north of G Street; and
 - (c) Encourage the general development pattern indicated in the Comprehensive Plan for the Arts District east of the Retail Core, specifically a mixture of residential, office and hotel development on upper floors of buildings, with arts, specialty retail and entertainment uses predominating on the lower levels of the buildings.
- 1704.2 The provisions of this section apply to properties in the following squares and portions of squares: 291, 32.2, 348, 406 407, 408, 431, 432, 455, 456 457, 458, 459,460, and those portions of squares 405, 429, and 454 that are south of a line extending the midpoint of G Place eastward from 9th Street to Gth Street.
- 1704.3 Each new or altered building shall devote not less than 1.0 FAR equivalent to arts and entertainment-related uses from §1711 and retail and service uses from §1710; Provided that the following requirements are met:
 - (a) Not less than 0.25 FAR equivalent of the required space shall be devoted to one or more of the following uses: art center, art exhibition area, art gallery, art school, artist live-work space, artist studio, performing arts space, cabaret, dance hall, dinner theater, legitimate theater, movie theater, museum, or television and radio broadcast studio;
 - (b) A building may comply with requirements of this subsection by devoting 0.5 FAR equivalent to uses listed in paragraph (a) , in which case the 1.0 FAR equivalent of total preferred uses is not required, and bonus density is earned in excess of the 0.5 FAR equivalent of uses from paragraph (a);
 - (c) A building that provides 1.5 FAR or more of residential uses shall have a reduced requirement of 0.5 FAR equivalent of preferred uses from §§1710 and 1711, of which no less than fifty percent (50%) shall be §1711 uses;
 - (d) Squares located in both the Arts District as delineated in the Comprehensive Plan and the SHOP District shall be subject to the arts and retail provisions of §1703, SHOP District, as specifically provided in Paragraph 1703.3(d); and
 - (e) A building located on a lot of 5,000 square feet (5,000 ft.) or less and having a height of six (G) floors or less at and above grade shall have a preferred use requirement of not less than 0.75 FAR equivalent of uses from §§1710 and 1711 combined, and shall not have a residential use requirement as provided in §1706.
- 1704.4 An unenclosed sidewalk cafe shall count towards the preferred use requirement of §1704.3, exclusive of paragraph (a); Provided, that the following requirements are met:

- (a) The countable sidewalk or atrium area for this purpose shall not exceed 1,000 square feet (1,000 ft.²); and
- (b) Sidewalk or atrium area on the lot or on adjacent public space is countable as a restaurant use provided that the sidewalk cafe is operated from a restaurant located on the subject lot.
- 1704.5 An art exhibition area shall count towards the preferred use requirement of §1704.3 exclusive of paragraph (a); Provided, that the following requirements are met:
- (a) The countable area for this purpose shall be not more than twenty percent (20%) of the total requirement for preferred uses specified in §1704.3;
- (b) The space shall be open to the public during normal business hours at least five (5) days per week and fifty (50) weeks per year;
- (c) The art exhibitions shall be curated by an art gallery or a professional curator;
- (d) The exhibitions shall change at least four (4) times per year with the exception that up to twenty percent, (20%) of the art works may be a permanent exhibition; and
- (e) At least two (2) of the exhibits, or a majority of the total art works displayed on an annual basis shall be offered for sale to the public.
- 1704.6 A building which provides the required 1.0 gross floor area equivalent for preferred uses specified in §1704.3, and which includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	<u>Devoted to the bonus use</u>		<u>Proportionate number of s.f. of additional g.f.a. earned for on-site or off-site development</u>
(a) Art center, art school, performing arts space, legitimate theater or museum. in excess in each of 40,000 case s.f. of gross floor area as provided in 51704.8	1	to	3
(b) Art Gallery or Museum located on 7th or G Street; legitimate theater, artist studio, artist live-work space, art center. art school, performing arts and rehearsal space	1	to	2
(c) Uses listed in 1704.3(a); small, minority or displaced business; and	1	to	1
(d) Other uses from §§1710 and 1711, in excess of the 1.0 FAR equivalent required by 51704.3, not to be counted in addition to bonus floor area from paragraphs (a) through (c) of this Subsection	1	to	0.5

- 1704.7** An art center or art school may qualify for this bonus despite being located in more than one (1) building; Provided, that the following requirements are met:
- (a) The buildings are located within a radius of 2,000 feet (2,000 ft.) of the centermost building; and
 - (b) The art school or art center shall be operated under centralized management as a single institution.
- 1704.8 Bonus density from arts uses not to exceed 0.5 FAR may be used to develop office space in lieu of residential space as required in §1706 of this chapter.
- 1704.9 A nonprofit arts use shall be entitled to twenty-five percent (25%) of density bonus in excess of the bonus ratio indicated in §1704.6.
- 1704.10 Floor area devoted to an arts use listed in §1704.3(a) that has a ceiling height greater than twelve feet (12 ft.) shall count towards the minimum required square footage at a rate of one-and-one-half times the actual square footage devoted to the use.
- 1705 CHINATOWN**
- 1705.1 The principal policies and objectives from the Comprehensive Plan for the Chinatown area are as follows:
- (a) To protect and enhance Chinatown as Downtown's only ethnic cultural area;
 - (b) To maintain and expand the existing concentration of retail uses emphasizing Chinese and Asian merchandise and related wholesale operations serving residents, visitors, tourists and business travelers;
 - (c) To reinforce the area's economic viability by encouraging mixed use development, including substantial housing; cultural and community facilities; offices; retail and wholesale businesses; and hotels; and
 - (d) To protect existing housing and the most important historic buildings with suitable preservation controls, residential and commercial zones and economic incentives.
- 1705.2 The provisions of this section apply to properties in the following squares: 428, 452, 453, 485, and 486, and those portions of squares 429 and 454 that are north of a line extending the midpoint of G Place eastward to 6th Street.

- 1705.3 Each building that fronts on H Street from 5th to 8th Street, on 7th Street for a distance of one-half (1/2) block north and south of H Street, or on 6th Street for a distance of one-half (1/2) block south of H Street, shall devote not less than 1.0 FAR equivalent to retail service and entertainment uses from §§1710 and 1711 and wholesaling accessory to those uses; provided, that this requirement shall be 0.5 FAR equivalent for a building that fronts on any other street segment in Chinatown or for a building that provides on-site or off-site, a residential component as required by §1706.
- 1705.4 In Square 485, a residential building that is brought up to building code and is covenanted to continue in residential use for twenty (20) years or longer shall be eligible for transferable development rights equal to the floor area maintained in residential use.
- 1705.5 A building that provides the required 1.0 gross floor area equivalent for preferred uses specified in §1705.3, and that includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	<u>Space Devoted to the bonus use</u>		<u>Proportionate number of 5.f. of additional g.f.a. earned for on-site or off-site development</u>
(a) Uses from §§1710 and 1711, in excess of the 1.0 FAR equivalent required by §1705.3	1	to	1
(b) small, minority or displaced business	1	to	1

1706 RESIDENTIAL AND MIXED USE DEVELOPMENT

- 1706.1 The policies and objectives for residential use and development in and near Downtown as specified in the Comprehensive Plan shall be the following:
- (a) To encourage construction of new housing and retention of existing housing so that a sizeable residential component is created that will help accomplish the balanced mixture of uses essential to a “Living Downtown”;
 - (b) To create the greatest concentration of housing in the Mount Vernon Square area;
 - (c) To encourage residential and mixed use development along Massachusetts Avenue;
 - (d) To promote mixed use development including residential use south of Massachusetts Avenue, extending to the south through Judiciary Square north, Chinatown, and Gallery Place: and

- (e) To support the significant residential development in the Market Square subarea in the 7th Street and Pennsylvania Avenue area.
- 1706.2 The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area, which is depicted in Map B and which is described by squares in §1706.8, provided that the transferable development rights provisions of §1706.3 shall be applicable throughout the DD District. Map B is incorporated by reference.
- 1706.3 Each lot in the Housing Priority Area shall provide on-site or account for off-site by combined lot development residential use and development as provided in this section: Provided further, that a building or a combined lot development that provides new residential uses on-site shall earn bonus density or transferable development rights as follows:
 - (a) Residential development north of Massachusetts Avenue shall earn one square foot of bonus density or transferable development rights for each square foot of residential use developed;
 - (b) Residential development south of Massachusetts Avenue shall earn two square feet of bonus density or transferable development rights for each square foot of residential use developed; and
 - (c) Residential development that qualifies as affordable dwelling units as defined in Subsection 1799.1 of this chapter shall earn two square feet of bonus density or transferable development rights for each square foot of affordable housing developed.
- 1706.4 In the DD/C-2-C zone the following residential and mixed use provisions shall apply:
 - (a) The maximum FAR shall be 8.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
 - (b) Each lot shall provide on-site or account for off-site in a combined development no less than 4.5 FAR of residential use:
 - (c) On a lot that is south of Massachusetts Avenue, up to 1.8 FAR this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;
 - (d) On a lot that is north of Massachusetts Avenue, up to 1.35 FAR of this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and

- (e) If such affordable housing is provided off-site, commercial or nonresidential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 1.8 FAR south of Massachusetts Avenue or 1.35 FAR north of Massachusetts Avenue.

1706.5 In the DD/C-3-C zone the following residential and mixed use provisions shall apply:

- (a) The maximum FAR shall be 9.5 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
- (b) Each lot shall provide on-site or account for off-site in a combined lot development no less than 3.5 FAR of residential use;
- (c) On a lot that is south of Massachusetts Avenue, up to 1.4 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;
- (d) On a lot that is north of Massachusetts Avenue, up to 1.05 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and
- (e) If such affordable housing is provided off-site pursuant to paragraph (c) or (cl) of this subsection, commercial or nonresidential FAR may be substituted on-site, or in a combined lot development, by the same amount of gross floor area as the affordable housing, up to the maximum limit of 1.4 FAR south of Massachusetts Avenue or 1.05 north of Massachusetts Avenue.

1706.6 In the DD/C-4 zone the following residential and mixed use provisions shall apply:

- (a) The maximum FAR shall be 10.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection:
- (b) Each building shall provide on-site or account for off-site in a combined lot development no less than 2.0 FAR of residential use;
- (c) Up to 0.8 FAR of this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and

- (d) If such affordable housing is provided off-site, commercial or nonresidential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 0.8 FAR.

1706.7 The maximum permitted gross floor area may be increased by 0.5 FAR up to a maximum of 8.5 FAR in the DDE-2-C District, 10.0 FAR in the DD/C-3-C District, and 10.5 FAR in the DD/C-4 District; Provided, that the following occurs:

- (a) The increase in gross floor area may be achieved by receiving transferable development rights as provided in § 1709, which floor area may be devoted to any permitted use on the receiving site;
- (b) The increased gross floor area may be entirely devoted to residential use; and
- (c) The increase may be earned by constructing or assisting affordable housing as defined in this chapter and as further governed by the provisions of this section, or by earning retail bonus density as provided in paragraph 1706.16.

1706.8 For the purposes of permitting and governing combined lot developments as provided by §1708, the Housing Priority Area is divided into three (3) subareas as follows:

- (a) Housing Priority Area A, the Mount Vernon Square North area, is located north of Massachusetts Avenue and comprises the DDE-2-C and DDIC-3-C zoned squares and parts of squares numbered 369, 370, 401, 402, 425, 426, 450, 451, 483, 484, W484, 514, 515, N515, 516, S516, 525, 526, 527, 528, 556, and 558;
- (b) Housing Priority Area B, the Mount Vernon Square South area, comprises the DDE-2-C and DDE-3-C zoned properties that are located south of Massachusetts Avenue, including squares and parts of squares numbered 247, 283, 284, 316, 317, 342, 343, 371, 372, 427, 428, 452, 453, 485, 486, 517, and 529; and
- (c) Housing Priority Area C, the Downtown Core area, comprises the DD/C-4 zoned properties that are located south of H Street, including squares and parts of squares numbered 406, 407, 408, 431, 432, 454, 455, 456, 457, 458, 459, 460 and 491.

1706.9 Combined lot development as authorized and governed by §1708 may be used by two (2) or more properties within any one of the three identified Housing Priority Areas, but not by properties in different Housing Priority Areas.

1706.10 A residential building in existence as of the effective date of this chapter shall be eligible to count its gross floor area towards the residential use requirements of this section: Provided, that the following occurs:

- (a) The building shall be continued in residential use, or, if vacant, shall be brought up to building code and covenanted to continue in residential use for twenty (20) years or longer;
 - (b) If the residential gross floor area of the building is less than the residential use requirement of the lot, there shall be no additional residential requirement for that lot; and,
 - (c) If the residential gross floor area of the building exceeds the required amount of residential use for the lot, the excess gross floor area may be used in a combined lot development to help meet the residential requirement of another lot or lots.
- 1706.11 No minimum residential use requirement shall apply in Square 485, nor to any lot or lots in Square 455 or the southern part of Square 454 improved with a sports arena.
- 1706.12 Bonus density derived from arts uses in the Arts District pursuant to §1704.6 and bonus density derived from the bonus provisions of §1705.5 pertaining to the Chinatown subarea may be used to substitute office space for up to 0.5 FAR of residential use as required by this section.
- 1706.13 If a development project includes both required residential uses and nonresidential uses, whether on the same lot or in a combined lot development, no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space: Provided, that, the following requirements are met:
- (a) A mixed residential-commercial project for which the Pennsylvania Avenue Development Corporation and a private developer have executed a contract requiring commencement of construction of the residential portion of the project by a date certain, may comply with the timing requirements of §1708.1(f) instead of the timing requirements of this subsection; and
 - (b) At least seventy-five percent (75%) of the commercial development that triggers the residential use requirement shall comply with the timing requirements of this subsection.
- 1706.14 In the Housing Priority Area the maximum height of a building shall be as provided in §§1701.7 and 1706.15 of this chapter.
- 1706.15 A building constructed on a lot fronting on M Street shall be limited to a maximum height of sixty feet (60 ft.) to a depth of forty feet (40 ft.) from the lot line on M Street.
- 1706.16 In Housing Priority Area A, for each square foot of gross floor area devoted to one of the preferred uses listed below, the project shall earn one square foot (1 ft, sq. of bonus gross floor area:

- (a) Grocery store;
 - (b) Dry cleaner or laundry;
 - (c) Drug store;
 - (cl) Hardware store;
 - (e) Variety store; and
 - (f) Child development center.
- 1706.17 In Housing Priority Areas B and C, each square foot of grocery store use shall earn two square feet (2 ft.sq. of bonus floor area.
- 1706.18 Renovation of a nonresidential building in existence as of the January 18 1991, and having a height of six (G) floors or less at and above grade shall not trigger a housing requirement as provided in this Section.
- 1706.19 A hotel or inn established pursuant to special exception approval in an SP District shall be deemed a conforming use in a DD/R-5 Zone. The hotel or inn shall continue to be governed by the conditions of the Board of Zoning Adjustment; Order granting the use. Enlargement or other changes shall be governed by §3107.2 of this title.
- 1706.20 These residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to §1707.4.
- 1706.21 A reduced residential requirements shall apply to property that was formerly in a highway right-of-way; Provided, that:
- (a) The housing that is built shall include affordable dwelling units as defined in this chapter:
 - (b) The gross floor area of the affordable dwelling units shall constitute not less than sixty percent (60%) of the total FAR of the project;
 - (c) The remainder of the project shall consist substantially of other residentially related development, such as child development, senior or elder care, community center and other neighborhood-serving social services that are offered by a nonprofit, religious or charitable organization, but may also include commercial district, ground floor commercial uses; and
 - (d) Where an improved right-of-way divides a project, the entire project shall be considered as if one lot for the purposes of determining compliance with this section.

1706.22 The Department of Employment Services (DOES) building site in Square 491 shall not be eligible to send any of the required minimum 2.0 FAR of residential use off-site through the combined lot development (§1708) or affordable housing provisions (§1706.23) of this chapter.

1706.23 If the affordable housing referenced in §§1706.4, 1706.5 and 1706.6 is provided by direct construction, the following conditions shall apply:

- (a) The owner or developer of the development site in the DD District that generates the affordable housing component may construct the affordable dwelling units or may joint venture with either a nonprofit housing sponsor or a for-profit builder-developer;
- (b) Construction of the affordable dwelling units may be either construction of a new building or buildings or rehabilitation of an existing building or buildings;
- (c) The total project cost, including acquisition, rehabilitation and long-term subsidy, shall be not less than the amount that the project would be obligated to contribute if the financial contribution option specified in §§1706.25 through 1706.27 had been pursued;
- (d) If construction or rehabilitation of the required square footage of affordable housing does not reach the required financial threshold specified in paragraph (c), the remaining housing requirement may be met by financial contribution to a housing trust fund or by construction or rehabilitation of additional units of housing;
- (e) If the affordable dwelling units are provided by rehabilitation, the building(s) shall have been previously in nonresidential use, or if previously in residential use, shall either have been vacant for not less than three (3) years prior to rehabilitation or, if occupied, shall be a tenant-sponsored purchase of the building;
- (f) The Director, Department of Housing and Community Development, or the administrator of the D.C. Housing Production Trust Fund, shall certify to the Zoning Administrator the following:
 - (1) That suitable legal and financial arrangements have been made to assure that the housing qualifies and will be continued as affordable dwelling units for not less than twenty (20) years;
 - (2) That the expenditure of funds per dwelling unit and the use of the funds in combination with other financial leverage, is an effective means of assisting in the production of affordable housing; and
 - (3) That all conditions in §§1706.23 through 1706.28 of this section have been met: and

- (g) **No certificate** of occupancy shall be issued for the nonresidential development within the DD District until a certificate of occupancy has been issued for the affordable dwelling units.
- 1706.24 If the affordable dwelling units are supplied by a contribution to a trust fund, the conditions specified in §§1706.25 through 1706.27 shall apply.
- 1706.25 The amount of the financial contribution shall be determined by the formula: $C = \text{GFA} (\text{AV}/\text{LA})/\text{FAR} \times \text{SO}\%$, and shall have the following meaning:
- (a) C = The contribution;
 - (b) GFA = The amount of additional commercial space that is built on-site, measured in square feet;
 - (c) AV = The assessed value of the land and improvements on the July 1st preceding the date on which the application for a building permit is filed;
 - (d) LA = The number of square feet of land included in the property;
 - (e) FAR = The commercial FAR used by the tax assessor to determine the assessed value; and
 - (f) 90% = The proportion of assessed commercial value that has been determined to be appropriate for this contribution.
- 1706.26 The contribution shall be made to the D.C. Housing Production Trust Fund or to both the D.C. Housing Production Trust Fund and a nonprofit housing trust fund as defined in this title: Provided, that not more than fifty percent (50%) of any contribution shall go to a nonprofit housing trust fund.
- 1706.27 The payment of the housing contribution shall occur before the issuance of a building permit for the development in the DD District that generates the housing contribution.
- 1706.28 Beginning July 1, 1992, and on or before that date on each even numbered year thereafter, the Director, Department of Housing and Community Development, or the administrator of the D.C. Housing Production Trust Fund, shall report to the Zoning Commission regarding affordable dwelling units subsidized or constructed pursuant to these provisions and, if appropriate, shall recommend any modifications needed to the affordable housing mechanisms of this chapter.

1707 HISTORIC PRESERVATION

- 1707.1 The most directly applicable policies and objectives from the Comprehensive Plan and other adopted policies for Downtown may be summarized as follows:
- (a) Preserve the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site;
 - (b) Encourage restoration and adaptive reuse of historic landmarks and adaptive reuse of contributing buildings in historic districts, together with compatible alterations and compatible new construction;
 - (c) Restrict permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a suitable scale of new construction in historic districts, especially in projects combining new development with preservation;
 - (d) Permit flexibility as to building height, rear yard and court requirements so as to allow maximum design flexibility for the massing and sculpting of the restricted building mass in relationship to the scale and character of affected historic buildings on the lot and nearby subject to the exterior design review and controls exercised by the Historic Preservation Review Board;
 - (e) Provide appropriate economic incentives to encourage preservation, including suitable on-site density and transferable development rights; and
 - (f) Encourage occupancy of historic buildings by active uses such as arts, cultural, entertainment, retail and small business uses, in keeping with the potential of historic buildings to make multiple contributions to the character of a “Living Downtown.”
- 1707.2 The provisions of this section apply to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.
- 1707.3 Uses within buildings in the historic districts and landmark sites within the DD District are governed by the underlying zones and the special use requirements and incentives provided in §§1703 through 1706 of this chapter.
- 1707.4 The permitted on-site floor area ratio (FAR) for any permitted use shall be 6.0 on each of the lots and squares listed below; provided that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be averaged with the permitted FARs of other lots that are part of the development, including any lots not subject to the 6.0 FAR maximum, so as to achieve a composite FAR for the entire development.
- (a) Square 320 lots 17, 800, 801, 808, 809, and 810;

- (b) Square 346;
- (c) Square 347, lots 18, 19, 800 through 803, and 818 through 826;
- (d) Square 376, lots 36 through 46, 48, 63, 64, 70, 801, 802, and 803;
- (e) Square 377, lots 35,819 through 821,823 through 829,846, 847 and 848;
- (f) Square 406, lots 11, 15, 807, 808, 809, and 814;
- (g) Square 428, lots 16, 17, 801 through 804, and 808 through 815;
- (h) Square 429;
- (i) Square 452, lots 26 through 29, 800, 802 through 806, and 817 through 824;
- (j) Square 453, lots 24 through 31, 40, 48, 50, 811, 812, 813, 815 through 819, 821, 831 through 835, and 839;
- (k) Square 454, lots 827 through 835;
- (l) Square 518, lots 845 through 855;
- (m) Square 405, lot 839;
- (n) All of Square 429 112;
- (o) All of Square 430;
- (p) Square 431, lots 23, 815 and 816;
- (cl) Square 458, lots 816, 818 and 823;
- (r) Square 459, Lot 809;
- (s) Square 460, lots 802 through 805, and 818;
- (t) All of Square 485;
- (u) Square 517, lots 20, 46, 834, and 835;
- (v) Square 457, lots 36, 826 and 871; and
- (w) Square 456, lots 34, 37, 857 and 858.

- 1707.5 A project in the Downtown Historic District or the Pennsylvania Avenue Historic Site, or an individual historic landmark is not eligible to construct bonus density or transferable development rights on-site, but may transfer bonus density or unused development rights to other sites in the Downtown Development (DD) District, or to sites in a receiving zone as delineated in §1709; Provided, that the following requirements are met:
- (a) The historic building or part thereof shall be a historic landmark or shall be a building within the Downtown Historic District or the Pennsylvania Avenue Historic Site, which has been preserved in whole or in part pursuant to D.C. Law 2-144 and this chapter;
 - (b) The property shall be one of those properties identified in §1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions;
 - (c) A historic building that has previously been restored pursuant to approval of the Historic Preservation Review Board within a 10-year (10) period prior to January 18, 1991 shall not be eligible to earn transferable development rights;
 - ((l) Undeveloped gross floor area of up to 4.0 may be transferred from the historic sending lot to a lot or lots elsewhere in the DD District or in a receiving zone; Provided that:
 - (1) Each one square-foot (1 ft.²) of unused density less than the matter-of-right commercial density of the underlying zone shall earn one square-foot (1 ft.²) of transferable development rights; and
 - (2) The matter-of-right densities of the applicable underlying zones are deemed to be 10.0 or 8.5 FAR in the DD/C-4 District pursuant to §§771.2 and 771.5 of this title, 6.5 FAR in the DDIC-3-C District and, for the purpose of this section only, 6.0 FAR in the DDIC-2-C District;
 - (e) In order to qualify for the transfer of development rights provided in this section, the property owner shall execute an instrument of transfer as provided in §1709 of this chapter that the following requirements are met:
 - (1) Effects a binding reduction in the unused development rights under this zoning ordinance otherwise available to the sending lot, to the extent of the rights transferred; and
 - (2) Requires completion of restoration of the historic building, buildings or parts thereof pursuant to plans approved by the Historic Preservation Review Board and/or the Mayor's Agent for Historic Preservation as required by D.C. Law 2-144;

- (f) For the purposes of administering §1707.5(e)(2), the Historic Preservation Division, Department of Consumer and Regulatory Affairs, shall certify in writing to the Zoning Administrator that restoration has been completed pursuant to plans approved as consistent with D.C. Law 2-144;
- (g) Prior to the completion of restoration as certified in §1707.5(f) of this section, one or more transfers of development rights as provided for in §1709 of this chapter may be executed following issuance of a building permit for the sending site, but a certificate of occupancy for the transferred development rights on the receiving site shall not be issued until the restoration on the sending site has been certified, as provided in §1707.5(f);
- (h) After the completion of restoration has been certified as provided in §1707.5(f), any transferred development rights shall vest in the receiving site without any relationship to the status of the historic sending site;
- (i) Notwithstanding the requirements of §§1707.5(g) and (h), up to twenty-five percent (25%) of the transferable development rights that the sending site is eligible for may be transferred to and fully vest in a receiving site under the following conditions:
 - (1) The owner of the sending site shall receive final approval of restoration plans from the Historic Preservation Review Board pursuant to D.C. Law 2-144;
 - (2) The instrument of transfer as required by §1707.5(e) shall include a requirement that the monetary proceeds of the transfer of development rights shall be utilized by the owner of the sending site exclusively for the cost of design and restoration, or restoration and new construction, of the historic building on the sending site;
 - (3) If the financial proceeds of the transfer exceed the total cost of design and construction on the sending site, the instrument of transfer shall provide that full funding of design and construction shall be reserved, together with a draw schedule and timetable for the construction work, prior to any other use of the funds in excess of that required for design and construction: and
 - (4) If §1707.5(i)(3) is applicable to a project, the transferable development rights shall not vest in the receiving lot or lots until the Director, Office of Planning, has certified to the Zoning Administrator that the allocation of funds and draw schedule provided pursuant to §1707.5(i)(3) are sufficient to allow the completion of the project; and

- (j) Bonus density, if any, generated by bonus uses on the sending site may be transferred in addition to the transferable development rights provided in this subsection for restricted density on the historic site, as provided in §1709.

1707.6 The rear and side yard requirements of the underlying zone district shall not apply in the Downtown Historic District or Pennsylvania Avenue Historic Site.

1707.7 A historic landmark or a contributing building in a historic district that has a gross floor area in excess of the 6.0 FAR limit specified in §1707.4 shall be permitted to occupy all floors of the building for permitted uses.

1708 COMBINED LOT DEVELOPMENT

1708.1 Two or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses or to transfer bonus density from one lot to one or more other lots; Provided, that the following occurs:

- (a) The lots may be located in the same square or in different squares;
- (b) A combined lot development shall be eligible for the density and area allowances permitted in §§1703, 1704, 1705 and 1706;
- (c) When combined lot development involves only linkage, i.e., the allocation of gross floor area required by this chapter to be devoted to preferred uses (hereinafter “linkage project”), such combined lot developments shall be limited to lots located within the same subarea as defined in §§1703, 1704, 1705, and 1706, except as provided in §1708.1(d);
- (d) Notwithstanding the requirements of paragraph (c) of this subsection and of §1706.9 of this chapter, a historic property that is identified and governed by §1707.4 of this chapter, is eligible to serve as the location of required residential uses within a combined lot development, even if the historic properties are located outside the Housing Priority Area as established in §1706.2.
- (e) In a linkage project, the required floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required space for preferred uses shall be incorporated into the building design and occupied: Provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;
- (f) In a linkage project, the certificate of occupancy for the development sending FAR for preferred uses to another development may be revoked, if no building permit for the receiving site has been issued to the developer within three (3) years after the issuance of the certificate of occupancy for the sending site, or if no certificate of occupancy for the

receiving site has been issued within five (5) years after the issuance of the certificate of occupancy for the sending site;

- (g) When combined. lot development involves a transfer of bonus density to another lot or lots, by itself or in addition to a linkage project, such density transfer may occur to any lot or lots within the DD District or in a receiving zone as provided in §1709 of this chapter, except as excluded by other provisions of this chapter and title;
- (h) The maximum permitted floor area for all uses, the minimum required floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum floor area requirements;
- (i) A building that has been constructed or that is under construction as of January 18, 1991 is not eligible to utilize the combined lot development provisions, nor to earn bonus density or transferable development rights pursuant to §1709;
- (j) No transfer of required gross floor area for preferred uses shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Director, Office of Planning and the Zoning Administrator, has been entered into among all of the parties concerned, including the District of Columbia:
- (k) A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer;
- (l) The document shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this arrangement for transfer of required floor area or bonus area; and
- (m) The notice of restrictions and transfer shall run with the title and deed to each affected lot.

1709 **TRANSFERRABLE DEVELOPMENT RIGHTS**

- 1709.1 This section authorizes the transfer of development rights from a project within the DD District to a receiving lot or lots located elsewhere in the DD District or in the Downtown East, New Downtown, or other receiving zones or sites pursuant to the provisions of this section.
- 1709.2 Transferable development rights shall be generated either by historic preservation as provided in section 1707 or by bonus uses pursuant to the subarea provisions of §§1703 through 1705 of this chapter.

- 1709.3 No transfer of unused development rights from historic properties pursuant to §1707 nor of bonus density derived from bonus uses, shall be effective under this section unless an instrument, approved by the Corporation Counsel to be legally sufficient to effect such a transfer and approved in content by the Zoning Administrator and the Director, Office of Planning, has been entered into among all of the parties concerned, including the District of Columbia.
- 1709.4 In the case of transferable development rights derived from historic preservation pursuant to §1707, the instrument shall effect the requirements found in **§1707.5 as well** as the applicable requirements of this section.
- 1709.5 In the case of bonus density derived from a bonus use or uses, the following provisions shall apply:
- (a) The property owner shall obtain a building permit indicating in appropriate plans the floor area designed and reserved for the designated bonus use(s);
 - (b) The instrument of transfer shall indicate the size of the applicable bonus use or uses in square feet of floor area and the location of bonus uses by reference to the plans required by paragraph (a);
 - (c) The indicated floor area shall be occupied by the designated bonus use or uses, or held as vacant;
 - (cl) Instruments of transfer may be executed to transfer bonus development rights to receiving sites after the building permit has been issued; Provided, however, that no certificate of occupancy for the transferred floor area shall be issued for the receiving site until the conditions specified in paragraphs (e) or (f) of this subsection, as applicable, have been complied with;
 - (e) If the project on the sending site generates transferable development rights from bonus uses of less than fifteen thousand square feet (15,000 ft.²), of gross floor area, any transferred development rights shall vest in the receiving site without regard for the status of the development on the sending site, after the certificate of occupancy for the bonus use(s) on the sending site has been issued;
 - (f) If the project on the sending site generates transferable development rights from bonus uses of fifteen thousand square feet (15,000 ft.²) or more of gross floor area, any transferred development rights shall vest in the receiving site without regard for the status of development on the sending site, after applicant provides evidence of a lease agreement with a complying user/occupant of the bonus space; Provided, that the following requirements are met:

- (1) The applicant shall provide the Zoning Administrator and the Director, Office of Planning, with evidence of the lease agreement with the operator of the bonus use; and
 - (2) The Zoning Administrator, with the concurrence of the Director, Office of Planning, will certify in writing that the requirements of this paragraph have been satisfied;
 - (9) Following the execution and recordation of an instrument transferring development rights to a receiving site, any modification of provisions of the instrument that relates to the type, size or discontinuance of a bonus use on the sending site shall require the approval of the Zoning Commission, after public hearing and with the concurrence of the Office of Planning; Provided, that the Commission shall find that the proposed modification is fully justified and consistent with the purposes of this chapter.
- 1709.6 The instrument of transfer shall increase the development rights under the zoning ordinance otherwise available to the receiving lot, to the extent of the rights transferred.
- 1709.7 If more than one transfer of development rights is made from a sending lot, the second transfer and all subsequent transfers shall be numbered "two" and sequentially, and the instrument of transfer shall include the names of the transferors and transferees involved in all previous transfers, including the amount of gross floor area transferred and the dates of recordation of each transfer.
- 1709.8 Transferable development rights may be retransferred from the original receiving lot(s) to another eligible receiving lot or lots, provided that there is compliance with the procedures specified in §1709.7 and other applicable provisions.
- 1709.9 Nothing in these regulations shall prohibit the purchase of Transferable development rights by an entity or individual who intends to re-sell the TDRs at a future date for use on a receiving site, so long as there is compliance with the provisions of this section and chapter.
- 1709.10 A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer.
- 1709.11 The instrument shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this agreement for transfer of required floor area or bonus floor area.
- 1709.12 The notice of restrictions and transfer shall run with the title and deed to each affected lot,

- 1709.13 A building that has been constructed or that is under construction as of January 18, 1991 is not eligible to earn bonus density or transferable development rights, nor to utilize the combined lot development provisions.
- 1709.14 The instrument of transfer shall be processed in the government as follows:
- (a) The instrument of transfer shall be submitted to the Zoning Administrator, with a copy provided to the Director, Office of Planning;
 - (d) The Zoning Administrator and the Office of Planning shall review the instrument to determine whether its contents are complete and accurate as to the applicable provisions of the Downtown Development District;
 - (c) If the Zoning Administrator and the Director, Office of Planning find that the instrument is complete and accurate in content, the Zoning Administrator shall transmit the instrument to the Office of Corporation Counsel, together with a written statement that the content complies with the provisions of the DD District;
 - (d) Corporation Counsel shall determine whether the instrument is legally sufficient, to effect the transfer of development rights;
 - (e) If Corporation Counsel finds the instrument to be legally sufficient, he or she shall forward it to the Mayor after notifying the Zoning Administrator of the finding;
 - (f, After signature by the Mayor or by the Secretary of the District of Columbia for the Mayor, the covenant or instrument of transfer shall be returned to the Zoning Administrator:
 - (6) The applicant, upon notification by the Zoning Administrator that the instrument has been signed by the Mayor, takes the covenant to the Recorder of Deeds, who records the covenant with the applicable sending and receiving lots, and who provides the applicant with two certified copies of the covenant and of title certificates for all affected properties; and
 - (h) The applicant provides one (1) certified copy to the Zoning Administrator and one (1) to the Office of Planning.
- 1709.15 The Downtown East receiving zone consists of the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626, 627, and 628 through 631.
- 1709.16 The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118.
- 1709.17 The North Capitol receiving zone consists of Squares 668 through 677, 709 through 713, and 715, each zoned C-3-C.

- 1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, and N743, each zoned c-3-c.
- 1709.19 The Southwest receiving zone consists of Squares 268, 270, 299, 300, 327, 386, 387, 463 through 466, 493 through 495, and 536 through 538, each zoned C-3-C.
- 1709.20 If the height of a receiving building exceeds the height that the provisions of this title allow as a matter-of-right for a building located on an abutting lot, including a lot that is separated from the receiving lot by an alley, no part of the receiving building shall project above a plane drawn at a forty-five degree (45°) angle from a line that, is:
- (a) Directly above the zone district boundary line between such abutting lot and the receiving lot; and
 - (b) Above such boundary line by the distance of the matter-of-right height that this title allow as for such abutting lot.
- 1709.21 In the New Downtown, North Capitol, Capitol South and Southwest receiving zones, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted floor area ratio shall be 10.0 for buildings permitted a height of 130 feet, and 9.0 for buildings permitted a lesser height.
- 1709.22 In the New Downtown receiving zone the height of a receiving building may not be measured from a point that fronts on New Hampshire Avenue.
- 1709.23 In the Downtown East receiving zone the maximum permitted gross floor area for any permitted uses shall be 9.0 and the maximum permitted building height shall be one hundred ten feet (110 ft.).
- 1709.24 In addition to the matter-of-right transfers authorized by this Section, a lot that is approved and developed as a Planned Unit Development pursuant to chapter 24 of this title may serve as a receiving site for transferable development rights; Provided that the following occurs:
- (a) The Planned Unit Development shall be located in a receiving zone or in a DD/C-2-C, DD/C-3-C or DD/C-4 zone;
 - (b) The maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted gross floor area shall be 10.5 for buildings permitted a height of 130 feet (130 ft.) and 9.5 for buildings permitted a lesser height; and
 - (c) Development rights may not be transferred to a lot that is within the site of a Planned Unit Development approved prior to October, 1989, nor to an historic landmark or a lot in an historic district.

1710 RETAIL AND SERVICE USES

1710.1 For the purposes of this chapter, the following uses are preferred retail and personal/consumer service uses:

- (a) Anchor Store;
- (b) Antique Store;
- (c) Apparel and Accessories Store;
- (d) Appliance Store;
- (e) Auction House;
- (f) Auto and Home Supply Stores, excluding installations;
- (g) Bank Loan Office, Savings & Loan, Credit Union, or Other Financial Institution;
- (h) Bakery, limited to baking of food sold on premises;
- (i) Bicycle Shop;
- (j) Barber or Beauty Shop;
- (k) Candy Store;
- (l) Child Development Center;
- (m) Computer Store;
- (n) Cosmetic Store;
- (o) Camera Store;
- (p) Delicatessen;
- (q) Department Store;
- (r) Dressmaking or Tailor Shop;
- (s) Drug Store;
- (t) Dry Cleaners;
- (u) Fabric Store;

- (v) Fast Food Restaurant, excluding drive-through;
- (w) Florist and Plant Stores;
- (x) Furniture Store;
- (y) Gift, Novelty and Souvenir Shop;
- (z) Grocery Store;
- (aa) Hardware Store;
- (bb) Health or Exercise Studio;
- (cc) Hobby, Toys and Game Shop;
- (dd) Home Furnishings Store;
- ~~(ee)~~ Jewelry Store;
- (ff) Liquor Store;
- (gg) Luggage and Leather Goods Store;
- (hh) Newsstand;
- (ii) Office Supplies and Equipment Store;
- (jj) Optician;
- (kk) Paint Store;
- (ll) Pet Store;
- (mm) Printing, Fast Copy Service;
- (nn) Radio, Television and Consumer Electronics Store;
- (oo) Secondhand Store;
- (pp) Shoe Repair and Shoeshine Parlor;
- (qq) Shoe Store;
- (rr) Specialty Food Store;
- (ss) Sporting Goods Store;
- (tt) Telegraph Store;

- (uu) Tobacco Store;
- (vv) Travel Agency, Ticket Office;
- (ww) Variety Store;
- (xx) Video Tape Rental; and
- (yy) Other similar personal/consumer service establishment or retail uses, including assemblage and repair clearly incidental to the principal use.

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

- (a) Art, Center;
- (b) Art Exhibition Area;
- (c) Art Gallery;
- (d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking;
- (e) Artist Live-work space;
- (f) Artist Studio;
- (g) Artists' Supply Store;
- (h) Arts Organizations, Administrative Offices of;
- (i) Arts Services, including set design, and restoration of art works;
- (j) Assembly hall, auditorium, public hall, or other performing arts space, including rehearsal/pre-production space or concert hall;
- (k) Book Store;
- (l) Cabaret;
- (m) Dance Hall, Discotheque, or Ballroom;
- (n) Dinner Theater;
- (o) Drinking Place, including bar, nightclub, or cocktail lounge;
- (p) Legitimate Theater;

- (q) Movie Theater;
- (r) Museum;
- (s) Performing Arts Ticket Office or Booking Agency;
- (t) Photographic Studio;
- (u) Picture Framing Shop;
- (v) Record Store, Musical Instruments Store;
- (w) Restaurant; and
- (x) Television and Radio Broadcast Studio.

1712 OFFICE SPACE USES

1712.1 For the purposes of this chapter, the following users are office space uses and not preferred uses:

- (a) Accountant;
- (b) Architect;
- (c) Attorney;
- (d) Bail Bondsman;
- (e) Counseling Service;
- (f) Consultant - General;
- (g) Dentist, Doctor, or Medical Office;
- (h) Employment Agency;
- (i) Escrow Agent;
- (j) Government;
- (k) Health Clinic;
- (l) Insurance Broker;
- (m) Laboratory;
- (n) Landscape Architect;

- (0) Mortgage Broker;
- (p) Real Estate Agent, Appraiser, Broker, Developer;
- (q) Stockbroker;
- (r) Tax Preparer;
- (s) Title Company;
- (t) Trust Company; and
- (u) Utility Company, Offices of.

1799 DEFINITIONS

1799.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Additional commercial space - the extra gross floor area permitted for commercial or office use on a lot in the Downtown Development District in exchange for providing or financially subsidizing affordable housing in other neighborhoods of the District.

Affordable dwelling unit . a dwelling unit that is sold or rented to a household of low or moderate income.

Anchor store - a single retail store, having 25,000 square feet or more of gross leasable area, and which is operated under single management and usually a single Certificate of Occupancy. An anchor store may include entertainment, recreation or arts functions that are accessory to then principal retail use, or which have a separate Certificate of Occupancy for a portion of the total floor area. Such subordinate uses may include eating and drinking, performance or visual art, limited recreational areas, children's play area, audio and visual displays, interactive electronic and similar functions.

Art center - A multifunctional arts use that:

- (a) Comprises two (2) or more distinct arts uses integrated under single management and a single Certificate of Occupancy;
- (b) Includes but is not limited to uses such as art gallery, artist studio, art school, performing arts space, administrative offices of arts organizations, movie theater, artist live-work space; and
- (c) Occupies part or all of a single building or a group of buildings that are within a radius of **two** thousand feet (2,000 ft.3 of the centermost building.

Art exhibition area - a building lobby or part of a lobby, or another publicly accessible room on the basement, first or second floors of a building, which space is designed and used for the public display and sale of works of art.

Assessed value - the fair market value of property, as determined by the property tax assessment records of the District of Columbia Department of Finance and Revenue, as of the July 1st preceding the date on which the building permit application is filed.

Department store - a single retail store, in excess of ninety thousand square feet (90,000 ft.“) of gross leasable area, that:

- (a) Is involved in the sale of, among other things, apparel and furnishing;
- (b) Is organized into departments or sections which are integrated under single management,; and
- (c) Is operated under a single Certificate of Occupancy,

Displaced downtown business - a business which occupies a building on or after the date on which a demolition permit has been issued for that building, or which occupied a building which was demolished after January 1, 1986.

Gross leasable area - the sum of the floor area occupied by the business or use, as measured from the exterior faces of the walls encompassing the space, and including any stairways, elevator shafts, escalators, or mechanical areas inside the perimeter walls of the business use. In a building occupied by multiple tenants or multiple uses, the central elevator core or cores, associated lobbies, stairways, and mechanical areas shall be excluded from gross leasable area, if they serve the building as a whole.

Housing Production Trust Fund - the trust fund established within the Department of Housing and Community Development by the Housing Production Trust Fund Act of 1988, the purpose of which is to stimulate production of housing for low and moderate income families and individuals.

Low income household - a household of one or more individuals with a total income equal to less than fifty percent (50%) of the Standard Metropolitan Statistical Area median as certified by the Department of Housing and Community Development.

Minority business . a Certified Minority Business as designated by the District of Columbia Minority Business Opportunity Commission.

Moderate income household - household of one or more individuals with a total income equal to between fifty percent (50%) and eighty percent (80%) of the Standard Metropolitan Statistical Area median as certified by the Department of Housing and Community Development.

Net leasable area - the sum of the floor area occupied by the business or use, as measured from the interior faces of the walls encompassing the space, and excluding any portion of the space devoted to mechanical equipment, lobby area, stairways, or elevators, if that portion of space serves the building as a whole.

Nonprofit housing sponsor - an organization that qualifies as a nonprofit organization under §501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. §501(c)(3)) and that specializes in assisting or building affordable dwelling units.

Nonprofit housing trust fund - an organization that qualifies as a nonprofit organization under §501(c)(3) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. §501(c)(3)) and that also:

- (a) Exists primarily for the purpose of assisting in the production of affordable dwelling units;
- (b) Operates a trust fund that disburses money for affordable housing development;
- (c) Receives applications for funds directly from developers of affordable housing;
- (d) Has adopted criteria for selection of projects and allocation of funds among various types of affordable housing developments; and
- (e) Has been certified by the Director of Housing and Community Development, as a qualifying nonprofit, organization that also complies with Paragraphs (a) through (d)

Performing **arts** center - one or more facilities that provide space for the performing arts, including but not limited to concert halls and legitimate theaters.

Residential uses - those uses defined in §199 of this title as apartments, apartment houses, bachelor apartments, and rooming and boarding houses; and

Small business - a business which occupies two thousand square feet (2,000 ft.sq) or less of net leasable area and which provides evidence of not being franchise-operated.